right to go with whomever she liked and he could divorce her if he did not like it. He became very angry and after they entered the flat she again told him not to interfere with her and that she wanted a divorce.

His wife's mother also told him that his wife was no longer interested in him and that it was time for him to leave the flat. As he could not tolerate the situation any more he went to the kitchen and got hold of a chopper. He said he then lost his mind and slashed his wife on the head. He felt something hitting him from behind and turned round and also hit his mother-in-law with the chopper. After she had run out of the flat he struck his wife many times with the chopper after which he left the flat and dropped the chopper outside the flat entrance. He then tried to jump off the top floor of that block of flats but was prevented from doing so by an elderly man. He then went to the Area Office where he remained until the police arrived and took him into custody.

The trial judges rejected his defence of grave and sudden provocation and found that he had full control of himself and knew what he was doing when he attacked his wife with the chopper. They found that even if all the provocation he complained he had received from his wife were true, a reasonable man belonging to the same class of society as the appellant, placed under the same circumstances, who is so provoked would not lose his self-control and do the acts that he did.

The trial judges rejected his defence of grave and sudden provocation. They found that he was not speaking the truth when he said he had lost his self-control as a result of the provocation that he said his wife had given him. They found he had full control of himself when he attacked and killed his wife with a chopper. In our judgment, having regard to those findings of fact, which are amply justified on the evidence, the conviction for murder was inevitable.

During the argument we were asked to re-consider whether the law as to grave and sudden provocation as laid down by the Privy Council in the Ceylon (now Sri Lanka) case of *Attorney-General* v. *K.D.J. Perera*[1] should be followed having regard to recent decisions in other jurisdictions. We declined because we considered that case binding on us in that the provisions of section 294 of the then Ceylon Penal Code were identical with Exception 1 of section 300 of our Penal Code which reads as follows:—

"Exception 1. — Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation,..."

In *Perera's case* the Privy Council described as quite impeccable the direction of the trial judge to the jury "that a defence of provocation could not succeed and the charge of murder could not therefore be reduced to culpable homicide not amounting to murder unless the action of the (accused) taken by him in consequence of the provocation was reasonably commensurate with the degree of provocation offered to him".

Applying the law as so stated there can be no doubt that the acts done by the appellant in consequence of the provocation, even if the appellant were to be believed, were not reasonably commensurate with the degree of provocation offered to him by his wife. Accordingly, we dismissed his appeal.

Appeal dismissed.

Solicitors: *David Marshall.*

COLLECTOR OF LAND REVENUE v. MANILAL & SONS (PTE.) LTD.

[C.A. (Wee Chong Jin C.J., Chua and D'Cotta JJ.) September 13, 1978]

[Singapore — Civil Appeal No. 33 of 1977]

Land Acquisition — Acquisition of warehouse property — Whether sales after relevant date could be taken into consideration by Appeals Board — Whether Appeals Board could take into consideration valuation by Commissioner of Estate Duties for estate duty purposes of comparable piece of property — Land Acquisition Act (Cap.272), s. 27(3).

This was an appeal from the decision of the Commissioner of Appeals, Choor Singh J. reported at [1977] 2 M.L.J. 100. It was argued on the appeal (a) that the Appeals Board should not have taken into consideration sales which took place after the relevant date, March 22, 1973, in arriving at the market value at the relevant date of the land acquired; (b) that the Appeals Board could not in law take into consideration in arriving at the market value of the land acquired a valuation by the Commissioner of Estate Duties for estate duty purposes of a comparable piece of property made after the relevant date.

Held, dismissing the appeal: the Commissioner of Appeals was correct in holding that the parties to the appeal were entitled to put before the Board any fresh evidence that might have come to light after the date of acquisition and which would assist the Board in determining the compensation to be paid to the landowner.

COURT OF APPEAL.

P. Selvadurai for the appellant.

Sachi Saurajen for the respondent.

Wee Chong Jin C.J. (delivering the judgment of the Court): Manilal & Sons (Private) Ltd., the respondent in this appeal, owned a warehouse, No. 22 Trafalgar Square, on land containing an area of 5,802 square feet and known as Lot 168[5] of T.S. 23. The warehouse is a single storey brick wall, tile roofed warehouse with a height of 17 feet. It is a solidly built warehouse, owner occupied and is an intermediate unit in a row of about ten other similar warehouses. It is within the "Warehouse" zone in the 1966 Master Plan and at all material times was used for warehousing purposes.

On March 22, 1973 the property was compulsorily acquired by virtue of a Gazette Notification published on that date. The Collector of Land Revenue held an enquiry on June 8, 1973. On October 22, 1973 the collector issued his award of $214,700 as compensation for the acquired property. This sum reflects a value of $37 per sq. ft. The respondent, being dissatisfied, gave Notice of Appeal on October 30, 1973. It took the collector almost one year after the Notice of Appeal to give his Grounds of Award. This seems to us to be inexcusable delay because no difficult issues had to be dealt with by him.

At the hearing before an Appeals Board consisting of the Commissioner of Appeals it was common ground that at the relevant date, March 22, 1973, the property market was very active. Land values had begun to improve in 1970 and prices rose gradually until the end of 1972 when the rise in prices accelerated and reached its peak in September 1973. After that there was a levelling off of prices.

It was also common ground that the Master Plan zoning of a property in Singapore is decisive in assessing its value, that there was at the material date a shortage of good warehouses and that in terms of property values "warehouses" zoning is superior to "residential" zoning.

The Commissioner after hearing expert evidence from two qualified land valuers increased the award to $348,120 which reflects a value of $60 per sq. ft. The expert, Mr. Cheong Thiam Siew, who gave evidence on behalf of the owner relied on recent sales of comparable properties. One such sale was on January 25, 1973 of a piece of property with an area of 16,130 sq. ft. at the price of $75 per sq. ft. on which were two pre-war single storey godowns used as warehouses and zoned in the Master Plan as "commercial". Another sale relied on was on January 29, 1974 of No. 10 Jiak Kim Street, a single storey pre-war building on land with an area of 28,117 sq. ft. at the price of $85.35 per sq. ft. This property is zoned "warehouse" in the Master Plan. Yet another sale relied on was on May 11, 1973 of No. 410 Havelock Road, a single storey godown on land zoned "warehouse" with an area of 16,000 sq. ft. at the price of $73.76 per sq. ft. The last transaction relied on was of a warehouse on land zoned "residential" with an area of 6,572 sq. ft. which was valued by the Commissioner of Estate Duties for estate duty purposes at $55 per sq. ft. as at March 15, 1974.

The other expert, Mr. Yap Eng Bok, who gave evidence on behalf of the collector relied entirely on one comparable sale which was of a row of godowns with an area of 52,000 sq. ft. known as Nos. 46 to 62 Palmer Road. This property was sold on January 5, 1973 at the price of $34.60 per sq. ft. One of the godowns was tenanted and subject to the Control of Rent Act. It was a sale by a subsidiary company to the parent company and at book value and not at the market price. It was clearly not an arms-length sale. Mr. Yap disregarded the sales of No. 410 Havelock Road on May 11, 1973 and of No. 10 Jiak Kim Street on January 29, 1974 because they took place after March 22, 1973, the date of the acquisition.

The Commissioner of Appeals rejected the submission made on behalf of the collector that all sales which took place after the relevant date, March 22, 1973 could not be taken into consideration by the Appeals Board in arriving at the market value at the relevant date of the land acquired. He also rejected another submission that the Appeals Board could not in law take into consideration in arriving at the market value of the land acquired a valuation of the Commissioner of Estate Duties for estate duty purposes of a comparable piece of property.

The collector appealed to this court and during the argument before us similar submissions were advanced on behalf of the collector but counsel for the collector was unable to refer to any authority or give any reasons in support of these submissions. We rejected these submissions. In our judgment the Commissioners of Appeal's reasons for rejecting these submissions are correct. They are to be found at pages 9 to 10 of his written Decision ([1977] 2 M.L.J. at 102) and read as follows:—

> "Counsel for the respondent submits that all sales which took place after the relevant date should not be taken into consideration by the Board in this Appeal; that the Board must place itself in the place of the Collector as at the material date and therefore the Board must disregard the comparables cited by Mr. Cheong Thiam Siew because the sales of those properties on which he relies and the valuation of 27 Sibu Road by the Commissioner of Estate Duties, all took place after the relevant date, i.e. March 22, 1973. I am unable to accept this submission. There is no authority for it. Appeals to the Appeals Board under the Land Acquisition Act are by way of a re-hearing and ... the parties to the appeal are entitled to put before the Board any fresh evidence that may have come to light after the relevant date and which will assist the Board in determining the compensation to be paid to the land owner for the acquisition of his land by the Government. In my judgment any sale of comparable property taking place within a reasonable time of the relevant date, both before and after, can be considered after making the necessary adjustments for all the relevant factors. For example, in this appeal, the respondent's expert witness, Mr. Yap relies on the sale of the Palmer Road property which took place on January 5, 1973 i.e. about two and a half months before the relevant date. I see no reason why this Board, in determining the proper compensation to be paid for the acquisition of the subject property, cannot take into consideration the sale of 410 Havelock Road which took place on May 11, 1973 i.e. 48 days after the relevant date, provided of course, the Board takes cognizance of all the distinguishing factors and makes the necessary adjustments. In my judgment it is entirely erroneous to suggest that the Board cannot consider any sale which took place after the relevant date."

Accordingly, we dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Drew & Napier.*

K.E. HILBORNE & ORS. v. NEW CHING KEE

[C.A. (Wee Chong Jin C.J., Chua and D'Cotta JJ.) October 16, 1978]

[Singapore — Civil Appeal No. 23 of 1978]

Legal Profession — Advocates and solicitors — Professional negligence — Action against solicitors for breach of implied term of engagement — Delay in filing Writ of Summons — File relating to matter misplaced — Solicitors negligent — Appeal.

Torts — Negligence — Professional negligence — Solicitors' appeal.

The appellants in this case sought to appeal against the lower court's judgment (see [1978] 2 M.L.J. 48) in awarding damages against them as solicitors for negligence and breach of contract to exercise due professional skill and care while acting for the respondent/client in his claim against the rider of a motor scooter for personal injuries which the respondent sustained. The appellants were found negligent by the lower court in failing to serve the Writ of Summons on the other party before the date on which the action became statute-barred. The appellants had submitted that the reason for the delay in filing the Writ was that the file relating to the plaintiff's matter had been misplaced in their office.

In the present appeal, the appellants contended that because they applied to renew the Writ before it expired, the delay in serving the Writ from the date of its issue on August 7, 1973 to July 31, 1974, two days after the missing file was found, could not be taken into consideration in deciding whether or not they were liable to their client in negligence or breach of contract.